

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RICHARD SHANE DAVIS,)	
)	
Petitioner,)	
)	
v.)	1:14-CV-558
)	
STATE OF NORTH CAROLINA,)	
)	
Respondent.)	


ORDER

The Recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on July 22, 2014, was served on the petitioner. The petitioner filed objections, (Doc. 5), as well as a Second Application to Proceed In Forma Pauperis (Doc. 6) and an Amended Petition (Doc. 7).

The Court has reviewed the objections and the Amended Petition and has made a determination that the Amended Petition does not correct at least one of the deficiencies identified in the Recommendation – namely, that the Amended Petition fails to indicate that petitioner exhausted state court remedies as required by 28 U.S.C. § 2254(b). Rather, the petitioner simply states that he has exhausted his state court remedies without addressing the requirement that a petition for writ of certiorari be filed with the North Carolina Court of Appeals. The Court therefore overrules the objection and adopts the Magistrate Judge’s Recommendation. The Second Application is denied as futile, for the same reasons given by the Magistrate Judge in the Recommendation.

IT IS THEREFORE ORDERED that this action be filed and **DISMISSED** *sua sponte* without prejudice and that Petitioner's Second Application (Doc. 6) is **DENIED**. A judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability shall not issue.

This the 21st day of August, 2014.



UNITED STATES DISTRICT JUDGE